

Docket: 71163 US03

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Jerdee et al.

Serial No.: 09/909,266

Group Art Unit: 1771

Filed: July 19, 2001

Examiner: C. Juska

For: POLYMERIC BASED CARPET

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

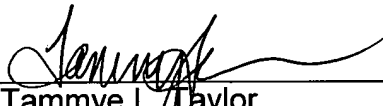
TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith in triplicate is the Appeal Brief in this application with respect to the Notice of Appeal filed June 19, 2006.

Please charge the appeal fee of \$500.00 to Deposit Account No. 05-0221. The Commissioner is hereby authorized to charge any additional fees under 37 CFR 1.16 and 1.17 which may be required by this paper or credit any overpayment to Deposit Account No. 05-0221. A duplicate of this transmittal is enclosed.

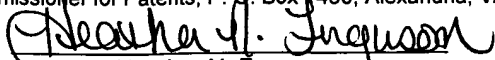
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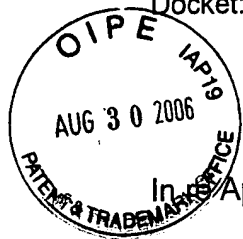

Tammye L. Taylor
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08/17/2006
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Heather N. Ferguson

8-17-06
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APPEAL BRIEF

This is an appeal from the final rejection of the Examiner dated January 19, 2006, rejecting claims 1 and 22-26. This Brief is accompanied by the requisite fee set forth in 37 C.F.R. § 41.20(b)(2).

REAL PARTY IN INTEREST

The real party in interest is Eastman Chemical Company.

RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences, or judicial proceedings known to Appellants, Appellants' legal representative, or assignee that may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 and 22-26 stand rejected and are under appeal. Claims 2-21 and 27-31 have been canceled. A copy of the claims involved in the appeal is attached in the Claims Appendix.

STATUS OF AMENDMENTS

There are no amendments filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The only independent claim on appeal is claim 1. Claim 1 is directed to a carpet composition. The carpet composition is recyclable without a separation step. The composition has from 50 to 100 percent of a polymeric material comprising:

- a) a tufted primary backing having a primary backing and tufts of carpet fibers penetrating a bottom surface of the primary backing and protruding from a top surface of the primary backing;
- b) a secondary backing material; and
- c) an adhesive material binding an upper surface of the secondary backing material to the bottom surface of the primary backing.

Page 2, lines 11-21.

The adhesive material consists essentially of a blend of an ethylene methyl acrylate copolymer and at least one polymer selected from the group consisting of low density polyethylenes, linear low density polyethylenes, high density polyethylenes, ultra low density polyethylene, styrenic copolymers of butadiene, styrenic copolymers of acrylonitrile, styrenic copolymers of ethylene, metallocene based polyethylenes, polyester, ethylene acrylic acid copolymers, ethylene methyl acrylic acid copolymers, butyl acrylate copolymers, ionomers, polyamides, and maleic anhydrides. Page 3, line 17 - page 4, line 2.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

There is only one ground of rejection to be reviewed:

Claims 1 and 22-26 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,508,771 to Peoples, Jr. et al. ("Peoples").

ARGUMENT

Ground of Rejection 1

Claims 1 and 22-26 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Peoples. For purposes of this appeal, claim 1 is representative of the rejected group of claims.

The rejection should be reversed because Peoples does not disclose or suggest each feature of claim 1. For example, Peoples fails to disclose or suggest using an adhesive material consisting essentially of a blend of ethylene methyl acrylate copolymer and another polymer as recited in claim 1.

To remedy this deficiency, the Examiner appears to be equating the claimed adhesive material with Peoples' thermoplastic barrier layer. *See Final Office Action* at 3 (Jan. 19, 2006). The barrier layer, however, does not satisfy the adhesive material of the present claims because it does not contain a blend of ethylene methyl acrylate copolymer and another polymer as recited in claim 1.

Peoples discloses that its barrier coating contains (1) a copolymer of ethylene with an unsaturated ester of a lower carboxylic acid, (2) an olefinic elastomer, and (3) a filler. Col. 4, lines 18-25. Neither the elastomer (2) nor the filler (3) is recited in the present claims as the additional polymer. Thus, the Peoples' barrier coating is missing at least one ingredient of the claimed adhesive material.

In response to this missing element, the Examiner asserts that "at least the presently claimed polymers of low density polyethylenes [LDPEs] and metallocene based polyethylenes [MBPEs] may be classified as olefinic elastomers." *Advisory Action* at 2 (Apr. 10, 2006). However, the assertion is flawed in the context of the present application. The present application considers elastomers to be different from LDPEs and MBPEs. See, e.g., page 3, line 17 – page 4, line 2. Here, the application mentions elastomers along side with LDPEs and MBPEs in a series. This indicates to persons skilled in the art that the present application does not consider LDPEs and MBPEs to be elastomers, but independent of them.

Notwithstanding the present application's treatment of LDPEs and MBPEs as separate and distinct from elastomers, the Examiner alleges that "the issue is not how

applicant defines "elastomer" in the specification....[T]he issue is whether the reference teaches said LDPE or MBPE." *Advisory Action* at 2 (May 31, 2006). But even if we were to accept the Examiner's statement of the issue, the Examiner's position is flawed. Peoples does not teach LDPE or MBPE as the olefinic elastomer. Peoples discloses examples of suitable elastomers at col. 7, line 26 - col. 8, line 24. There is no mention of LDPE or MBPE.

Moreover, the Examiner maintains that Peoples' "olefinic elastomers encompass LDPE and MBPE." *Id.* By this statement, the Examiner apparently considers LDPE and MBPE to be species of Peoples' olefinic elastomers. However, as noted above, the present application considers LDPEs and MBPEs to be different and distinct from elastomers, because the present application recites LDPEs, MBPEs, and elastomers all next to each other in a list of possible polymers for blending with the ethylene methyl acrylate copolymer. Page 3, lines 19-22. Just as LDPE is different from linear low density polyethylene in that list, so are LDPE and MDPE different from elastomers in that list. Since the LDPE and MBPE in the present claims are not elastomers, Peoples does not teach or suggest the LDPE and MBPE as recited in the present claims.


In sum, the rejection based on Peoples should be reversed because Peoples does not disclose or suggest each feature of representative claim 1.

CONCLUSION

For the foregoing reasons, the rejection in the Final Office Action should be reversed.

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CLAIMS APPENDIX

Claim 1 (previously presented): A carpet composition, recyclable without a separation step, having from 50 to 100 percent polymeric material comprising:

- a) a tufted primary backing having a primary backing and tufts of carpet fibers penetrating a bottom surface of the primary backing and protruding from a top surface of the primary backing;
- b) a secondary backing material; and
- c) an adhesive material binding an upper surface of the secondary backing material to the bottom surface of the primary backing;

wherein the adhesive material consists essentially of a blend of an ethylene methyl acrylate copolymer and at least one polymer selected from the group consisting of low density polyethylenes, linear low density polyethylenes, high density polyethylenes, ultra low density polyethylene, styrenic copolymers of butadiene, styrenic copolymers of acrylonitrile, styrenic copolymers of ethylene, metallocene based polyethylenes, polyester, ethylene acrylic acid copolymers, ethylene methyl acrylic acid copolymers, butyl acrylate copolymers, ionomers, polyamides, and maleic anhydrides.

Claims 2-21 (canceled)

Claim 22 (previously presented): The carpet composition of claim 1 wherein said adhesive material consists essentially of a blend of an ethylene methyl acrylate copolymer and at least one polymer selected from the group consisting of low density polyethylenes, linear low density polyethylenes, high density polyethylenes, ultra low density polyethylene, and metallocene based polyethylenes.

Claim 23 (previously presented): The carpet composition of claim 1 wherein said adhesive is a coextruded blend.

Claim 24 (previously presented): The carpet composition of claim 1 wherein said adhesive material has a thickness of from 0.001 inches to 0.050 inches.

Claim 25 (previously presented): The carpet composition of claim 1 wherein said adhesive further consists essentially of additives selected from the group consisting of fillers, flame retardants, odor reduction additives, scent enhancing additives and ultra-violet light protection additives.

Claim 26 (previously presented): The carpet composition of claim 1 wherein said carpet fibers, primary backing material and secondary backing material are selected from the group consisting of polypropylene, polyester, acrylics, polyethylene, polyamide, wool, cotton, rayon and combinations thereof.

Claims 27-31 (canceled)

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.